

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DANIEL VALLE, MARIO
VALLE, ERIBERTO VALLE, MARISOL
VALLE, and RICARDO VALLE DOMINGUEZ,
Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

UNPUBLISHED
October 19, 2006

v

CAROLINA DOMINGUEZ,

No. 269461
Macomb Circuit Court
Family Division
LC No. 2004-5775711-NA

Respondent-Appellant,

and

EZEQUIEL VALLE NUNEZ, f/k/a RUBEN
NUNEZ,

Respondent.

Before: Cavanagh, P.J., and Bandstra and Owens, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Respondent-appellant argues that the trial court clearly erred in finding that one or more statutory grounds for termination were established by clear and convincing evidence. We disagree. In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re Jackson*, 199 Mich App 22, 25; 501 NW2d 182 (1993), citing *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). "Once a ground for termination is established, the court must issue an order terminating parental rights unless there exists clear evidence, on the whole record, that termination is not in the child's best interests." *In re Trejo*, 462 Mich 341, 354; 612 NW2d 407 (2000); see also MCL 712A.19b(5). We review the trial court's determinations for clear error. *Trejo*, *supra* at 356-357; MCR 3.977(J).

The trial court did not clearly err in finding that petitioner established the statutory grounds for termination by clear and convincing evidence. *Trejo, supra* at 356-357. The condition that led to the adjudication was respondent-appellant's inability to provide care or custody for the children because of her incarceration. Although she was no longer incarcerated by the time of the termination trial, the evidence revealed that she remained clearly unable to provide proper care or custody for the children. Specifically, she failed to maintain suitable housing and, because of her illegal immigrant status, failed to maintain legal employment. She also failed to comply with important terms of her court-ordered Parent-Agency Agreement intended to address her issues by not attending parenting classes or individual counseling. Those requirements were strongly recommended by her psychological evaluation because of her significant parenting deficits and the children's emotional and educational difficulties, and her failure to substantially comply with them was indicative of neglect. *Trejo, supra* at 360-361 n 16.¹ In addition, respondent-appellant failed to present a viable custodial plan for her children because she was required to leave the United States under the terms of her "voluntary departure" shortly following the termination trial. She presented no plans for employment and/or income to support the children upon her return to Mexico, aside from selling gold from her home, nor did she indicate how she would work towards rectifying her parenting deficiencies in Mexico.

Given her failure to make significant progress towards rectifying her parenting issues during the proceedings and the short amount of time she could remain in the United States, respondent-appellant would not likely be able to make a meaningful effort towards reunification if given more time to do so. The evaluating psychologist's "extremely guarded" prognosis that respondent-appellant would be capable of caring for her children considering her parenting limitations clearly supports that conclusion. The foregoing clearly established that respondent-appellant would likely not be able to provide proper care and custody for the children within a reasonable time, and thus the trial court did not clearly err in determining that termination was warranted under MCL 712A.19b(3)(c)(i) and (g). *Trejo, supra* at 356-357.

We also find no clear error in the trial court's determination that termination was warranted under subsection (j). *Trejo, supra* at 356-357. Given respondent-appellant's failure to address her parenting deficiencies, the serious educational neglect and emotional issues displayed by the children, the children's reports concerning physical discipline, and respondent-appellant's inability to remedy her illegal immigrant status for over six years so that she could provide the children with a stable environment, there clearly existed a reasonable likelihood of harm if the children were returned to her care. MCL 712A.19b(3)(j).

The trial court also did not clearly err in determining that the children's best interests did not preclude termination of respondent-appellant's rights. MCL 712A.19b(5); *Trejo, supra* at 356-357. Respondent-appellant clearly had not resolved her inability to provide proper care for the children. Furthermore, the record revealed only a minimal bond, if any, between respondent-

¹ Although respondent-appellant argues on appeal that her language barrier prevented her from attending parenting classes, the caseworker's testimony clearly revealed that she would have accommodated respondent-appellant by providing her with an interpreter.

appellant and her children with the exception of the eldest child.² Although the record indicated that a bond existed between respondent-appellant and that child, who was 14 years old, their bond did not “clearly overwhelm,” *Trejo, supra* at 364, the evidence showing that she was unable to provide proper care or custody for him and would not likely be able to do so in the future, especially considering his significant emotional and educational issues. It was also notable that he revealed to the caseworker that he did not ever want to return to Mexico, where respondent-appellant would be returning because of her “voluntary departure” from the United States. Furthermore, the record revealed that all the children were “doing well” in their placements. Viewing this record in its entirety, we find no clear error in the trial court’s best-interests determination. *Trejo, supra* at 356-357.³

Affirmed.

/s/ Mark J. Cavanagh
/s/ Richard A. Bandstra
/s/ Donald S. Owens

² Clearly, the lack of bond between respondent-appellant and the children might be attributable to her incarceration and that she was only allowed one visit with the children after her incarceration. However, it was her conduct during that visit, wherein she allegedly repeatedly asked the eldest child where he lived and went to school, and the fear that her family might attempt to take the children, that led to the suspension of her parenting time.

³ The trial court went beyond the best interests inquiry under MCL 712A.19b(5). The statute does not require that the court affirmatively find that termination is in the children’s best interests. *Trejo, supra* at 364 n 19.